ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
JUL - 1 1996
Federal Communications Commission
Office of Secretary

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	
Implementation of the	)	
Pay Telephone Reclassification	)	CC Docket No. 96-128
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA"),[1] by its attorneys, hereby submits its initial comments in response to the above-captioned Notice of Proposed Rulemaking.[2] Section 276 of the Telecommunications Act of 1996 ("1996 Act")[3] directs the Commission to ensure that all payphone owners are compensated for calls originated on their payphones. In implementing this section, rather than making the called party or the carrier

---

[1] PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

[2] FCC 96-254 (June 6, 1996) ("*Notice*"). By *Order* of the Commission, DA 96-983 (June 20, 1996), the comment deadline in this proceeding was extended until July 1, 1996.

[3] Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. § 276.

receiving the call responsible for compensating the payphone service provider ("PSP"), the Commission should make the calling party responsible for such compensation.

I. INTRODUCTION

In its *Notice*, the Commission proposed a series of rules designed to ensure that, pursuant to Section 276, payphone service providers are compensated for "'each and every completed intrastate and interstate call using a payphone.'"[4] Specifically, the Commission proposed two compensation schemes for PSPs. The first proposal is a "carrier pays" mechanism whereby the interexchange carrier ("IXC") that receives a payphone-originated call would be required to pay a per-call charge to the payphone provider. Each IXC would then make its own business decision how to recover this cost. The second proposal is a "set use fee" scheme under which the IXC would bill and collect a fee from the end user and remit this fee to the PSP.[5] In the case of subscriber 800 and other toll-free number calls, the set use fee could be collected from the subscriber.[6]

The Commission tentatively rejected any "coin-deposit" approach under which payphone users (*i.e.*, calling parties) would be made responsible for compensating payphone owners. Such a plan was rejected because: (1) it would burden transient payphone callers by requiring them to deposit coins in addition to providing billing information; and (2) under

---

[4] *Notice*, ¶ 1 (quoting 47 U.S.C. § 276(b)(1)(A)).

[5] *Id.*, ¶ 25.

[6] *Id.*, ¶ 25.

Section 226(e)(2), the FCC is prohibited from adopting compensation rules for interstate access code calls that require advance payment by consumers.[7]

II. THE COMMISSION SHOULD ADOPT A CALLING PARTY PAYS COMPENSATION PLAN FOR PAYPHONE SERVICE PROVIDERS

Preliminarily, under both of the FCC's proposed schemes, the called party will be required to compensate the PSP for the caller's payphone use. Under the "set use fee" scheme, such compensation is explicit, while under the "carrier pays" scheme, such compensation is implicit but virtually inevitable given that IXCs have no place other than their customers to turn for cost recovery. The Commission thus proposes to place the entire burden of compensating PSPs on parties that *receive* payphone calls.

Using the case of paging as an example, it is clear that the calling party, rather than the called party, is the more appropriate entity to be required to support payphone owners. In the messaging industry, a "calling party pays" plan is essential because subscribers have no control over the instrument (a payphone or other telephone) from which messages are sent to their pagers. Without such control, it is impossible for a paging customer or its service provider to predict the amount that may be owed to PSPs. Such unpredictable costs, where the subscriber or its service provider have no control over their causation, are unacceptable in a highly competitive industry based on low cost, flat fee communications services.

In order to prevent such an irrational result, the Commission should in effect establish a "calling party pays" scheme under which the party using a payphone would compensate the

---

[7] *Id.*, ¶ 27.

PSP. Under this plan, payphones would be clearly marked with information stating that a surcharge will be added to all toll free and interexchange calls in order to compensate the payphone owner. Then, customers making coin calls would be required to deposit extra coins, customers placing 800 number calls would be required to deposit coins, and customers placing credit card calls would be charged slightly more on their credit card bill for calls placed from payphones.[8]

Such a scheme would be consistent with sound economic principles and customer expectations. As a matter of economics, a "calling party pays" plan allows both the calling party and the called party to rationally allocate their costs. Such is the case because the calling party knows that he or she is using a payphone and will be charged extra for that service. The calling party thus can make a rational decision to place a messaging call from a payphone or other telephone. By contrast, under the Commission's proposals, the party who is unaware of and cannot control whether the call is payphone-originated is assessed a surcharge.

Notably, there is no consumer expectation that payphone calls are free. Quite to the contrary, as implied in the name of the instrument, one expects to feed money into a payphone. Further, there is no longer an expectation that all 800 calls are free. For example, hotel guests are often charged a small fee for making 800 calls from their rooms. Finally, a number of states have implemented "calling party pays" schemes for 800 calls

---

[8] If the payphone owner chooses to install a coinless payphone, then logic dictates that the owner should be permitted to charge a user's calling card or credit card for the fee, rather than require a coin deposit.

placed from payphones.[9] Thus, payphone users will not be surprised if they are assessed a small charge for all calls, including 800 calls.

III. CONCLUSION

The Commission should implement a calling party pays scheme to compensate payphone providers for the use of their telephones. Such a plan will place the burden of supporting payphones on the party that chooses to use such phones, thereby allowing all

[9] Illinois, Michigan, North Carolina, and Ohio all allow PSPs to add caller surcharges to 800 calls placed from payphones.

telecommunications customers to better forecast their costs. Finally, a calling party pays scheme would not be inconsistent with customer expectations.

Respectfully submitted,

PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

By: Mark J. Golden KMH

Mark J. Golden
Vice President -- Industry Affairs
Personal Communications
Industry Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561
(703) 739-0300

By: Katherine M. Holden

Katherine M. Holden
Stephen J. Rosen
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 2006
(202) 429-7000

July 1, 1996